



April 27, 2001

Ms. Pamela Harrell Liston
Cowles & Thompson
901 Main Street, Suite 4000
Dallas, Texas 75202-3793

OR2001-1737

Dear Ms. Liston:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 146529.

The Rowlett Police Department (the "department"), which you represent, received a request for the department's policies and procedures. You claim that the requested information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note that in the requestor's letter dated February 6, 2001, the requestor indicates that she made a previous request for the same information made the subject of the current request. Pursuant to section 552.301(b), a governmental body that receives a written request for information that it wishes to withhold must ask for a decision and state the exceptions that apply not later than the tenth business day after the date of receiving the written request. The requestor states that her initial request was dated January 16, 2001. Your request for a decision from this office was postmarked February 20, 2001. Assuming that the requestor did not withdraw her request dated January 16, 2001, either voluntarily or by operation of law, it appears that you failed to request a decision within the ten business day period as required by section 552.301(b).

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with section 552.301 results in the legal presumption that the requested information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See* Gov't Code § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.--Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to Gov't Code § 552.302); Open Records Decision No. 319 (1982). You have not provided a compelling reason under section 552.108

to overcome the presumption of openness. *But see* Open Records Decision No. 586 (1991) (need of another governmental body to withhold requested information may provide compelling reason for nondisclosure under section 552.108). Therefore, if the requestor did not withdraw her initial request, you may not withhold the requested information under section 552.108 of the Government Code.

Assuming instead that the requestor did withdraw her first request dated January 16, 2001, we will address your claimed exception. Section 552.108 of the Government Code provides in pertinent part as follows:

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from the requirements of Section 552.021 if:

(1) release of the internal record or notation would interfere with law enforcement or prosecution[.]

Gov't Code § 552.108(b)(1). This office has stated that certain procedural information may be withheld under section 552.108 of the Government Code, or its statutory predecessors. *See, e.g.*, Open Records Decision Nos. 531 (1989) (detailed use of force guidelines), 456 (1987) (forms indicating location of off-duty police officers), 413 (1984) (security measures to be used at next execution), 143 (1976) (specific operations or specialized equipment directly related to investigation or detection of crime). To claim this aspect of section 552.108 protection, however, a governmental body must meet its burden of explaining, if the requested information does not supply the explanation on its face, how and why release of the requested information would interfere with law enforcement and crime prevention. Open Records Decision No. 562 at 10 (1990). Further, commonly known policies and techniques may not be withheld under section 552.108. *See, e.g.*, Open Records Decision Nos. 531 at 2-3 (1989) (Penal Code provisions, common law rules, and constitutional limitations on use of force are not protected under section 552.108), 252 at 3 (1980) (governmental body did not meet burden because it did not indicate why investigative procedures and techniques requested were any different from those commonly known with law enforcement and crime prevention).

You state that the submitted information contains "highly sensitive information" and that the release of such information would allow the public to "ascertain how the Rowlett Police Department will proceed, react, and respond in the situations described which will seriously impair and unduly interfere with the Rowlett Police Department's abilities to execute its duties." After careful review of the submitted information, we conclude that some of the information, which we have marked, may be withheld under section 552.108(b)(1) of the Government Code. The remaining information must be released to the requestor.

To summarize, we conclude that: (1) if the requestor did not withdraw her initial request dated January 16, 2001, the submitted information must be released to the requestor in its entirety; and (2) if the requestor did withdraw her initial request, the department may withhold the marked information under section 552.108(b)(1) of the Government Code.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

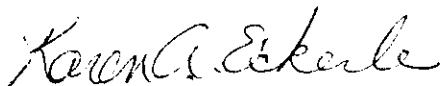
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in cursive script, appearing to read "Karen A. Eckerle".

Karen A. Eckerle
Assistant Attorney General
Open Records Division

KAE/rr

Ref: ID# 146529

Encl.: Marked documents

cc: Ms. Morgaine Albyon
6005 Magnolia Lane
Rowlett, Texas 75089
(w/o enclosures)